2011 Alabama Medical Malpractice Decisions

From the desk of Walter Price

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Only a Similarly Situated Healthcare Provider May Offer Expert Testimony

Springhill Hospitals, Inc. v. Critopoulos, 2011 WL 5607816 (Ala.)

Under the Alabama Medical Liability Act, only a "similarly situated" healthcare provider may provide expert testimony in a medical malpractice case. One of the requirements to meet this definition is that the expert witness practiced in the same discipline or school of practice during the year preceding the date of the alleged breach of the standard of care. *Critopoulos* involved claims relating to development of a pressure ulcer following cardiac artery bypass and grafting. Plaintiff's expert witness was a registered nurse who was very experienced in wound-care management. Nonetheless, the Supreme Court of Alabama held that the trial court erred in allowing her to testify as she had not practiced as an intensive care cardiac nurse and had never provided direct, hands-on care as a staff nurse to patients recovering in a cardiac unit.

In addition, the court rejected Plaintiff's argument that the witness should have been allowed to testify based upon the "highly qualified" exception to the general requirements of the AMLA. *See e.g. Health Trust, Inc. v. Cantrell*, 689 So.2d 822 (Ala. 1997). The court noted that the witness was highly qualified with regard to general wound-care treatment and the prevention of pressure ulcers, though she was not shown to be highly qualified with regard to the prevention of pressure ulcers in post-CABG patients in a cardiac recovery unit.

Combined and Concurring Negligence Applies in Medical Malpractice Cases

Breland v. Rich, 69 So.3d 803 (Ala. 2011)

In this case, which primarily involved failure to document the need for follow-up examinations to access potential for retinopathy of prematurity, the Supreme Court of Alabama confirmed that the doctrine of combined and concurring negligence applies to medical malpractice cases. Specifically, the Court held that alleged negligence by hospital staff in failing to meet the hospital's own policy and procedure did not relieve the pediatric ophthalmologist of liability in light of his own error in posting the need for follow-up examination.

Application of Learned-Intermediary Doctrine

Nail v. Publix Super Markets, Inc., 2011 WL 1820087 (Ala.)

The Supreme Court of Alabama reversed summary judgment in favor of a pharmacy in a case involving a Coumadin prescription. The patient was initially prescribed 1-milligram tablets of Coumadin to be taken five times a day. This prescription was refilled 15 times by the pharmacy. However, when the prescription was refilled, the physician's office changed it to 5-milligram tablets of Coumadin to be taken "used as directed". The patient did so, and was ultimately admitted to the hospital with Coumadin toxicity.

On appeal, the Court initially found that there was conflicting evidence regarding the duty of the pharmacist to counsel customers on a change in dosage of any medication. Finding this fact issue, the court then addressed whether the claims were barred by the learned-intermediary doctrine. Under Alabama law, pursuant to the learned-intermediary doctrine, a pharmacist does not have a duty to warn customers of the hazardous side-effects of medications. This is based upon recognition that pharmacists dispense medication prescribed by physicians who are in the best position to evaluate the needs of their patients. Nonetheless, the Supreme Court of Alabama held that the learned- intermediary doctrine did not apply to Nail's claim that the pharmacist should have advised that there was a significant *change* in the dosage of her Coumadin. The basis for this finding was that notification of a change in prescription strength does not infringe upon the physician-patient relationship.

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Subsequent Negligent Medical Care is Foreseeable and Not a Superceding Intervening Cause of Death

Frazier v. Gillis, 2011 WL 3375601 (Ala. Civ. App.)

Here, the Alabama Court of Civil Appeals reversed judgment as a matter of law entered in favor of the defendant physician. Plaintiff's claims essentially involved failure to monitor the appropriate, therapeutic dose of Coumadin prescribed for the patient. The defendant had argued that the causal chain was broken when others failed to admit the patient to the hospital when her INR was dangerously elevated thus relieving Dr. Gillis of any liability. In reversing the judgment, the Court of Civil Appeals confirmed long-standing Alabama law that the possibility that an injured party will receive negligent medical care is always foreseeable and, therefore, does not represent an independent or superceding cause allowing the defendant to avoid liability.

Establishment of the Standard of Care

O'Rear v. B. H., 69 So.3d 106 (Ala. 2011)

In a decision highlighting how "bad facts make for bad law," the Supreme Court of Alabama held that the Hippocratic Oath and rules of the American Medical Association set the standard of care applicable to a physician against whom many claims were brought arising out of an alleged years-long history of providing prescriptions for opiate-based medications to a minor in exchange for sexual relations. In particular, the Court held that the physician's acknowledgment that he was obligated to follow such requirements was sufficient to further show a breach of the standard of care as regards those claims allegedly associated with medical treatment and, therefore, subject to the Alabama Medical Liability Act. The dissent more appropriately noted that rules of medical ethics may influence the standard of care but do not, alone, establish the standard of care.

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